

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

John R. Weaver, Esquire
Farr, Burke, Gambacorta & Wright, P.C.
P.O. Box 510
Wilmington, DE 19899

Mr. Ellery J. Bensel
29393 Edgewood Avenue
Laurel, DE 19956

Re: ***Wachovia Dealer Services v. Bensel***
C.A. No. SS07C-09-029 RFS

Upon Plaintiff's Petition for a Writ of Replevin. Granted.

Submitted Date: May 14, 2010
Decided Date: June 15, 2010

Dear Messrs. Weaver and Bensel:

This is an action for replevin and money damages resulting from the purchase and financing of a vehicle. This Court held a hearing in March 2009, and ordered the parties to proceed to mediation. Mediation was unsuccessful. The parties have submitted letter memoranda on the issue of replevin and damages. The factual record is complete.¹ For the reasons explained below, the motion for a writ of replevin is granted, and judgment is

¹Because the factual record is complete, upon review of the March 2009 transcript filed on May 14, 2010, the hearing scheduled for Thursday, September 9, 2010, is cancelled.

entered for Plaintiff on damages.

The record shows the following facts. On July 6, 2004, Ellery J. Bensel (“Bensel”) purchased a 1997 Ford Expedition from Paul Burns Auto Center in Langhorne, Pennsylvania. The purchase price was \$27,545. Bensel financed the car in part by way of a loan from WFS Financial Inc., now doing business as Wachovia Dealer Services, Inc. (“Wachovia” or “Plaintiff”). It is uncontested that Bensel made payments on the loan until he paid off the entire amount he owed in principal. He then made no further payments, defaulting in the amount of \$7,794.14 in financing charges and fees. At the hearing, Bensel stated that he decided not to pay the finance charges and fees because he never received the tags for his vehicle.

Because Bensel is in default, Plaintiff seeks a writ of replevin for the vehicle. Plaintiff also seeks a judgment in its favor for the outstanding amount on the contract of \$7,794.14, as well as costs and attorneys fees.

Bensel’s defense is that he never received the permanent tags to the car and that it has sat unused since 1994 when the 30-day temporary tags expired. He asserted at the hearing that he attempted to obtain the tags from the dealership, as well as from various offices operated by Plaintiff, to no avail. He explained that he did not want to go to either the Pennsylvania or Delaware Department of Motor Vehicles (DMV) and pay the same fees he had agreed to pay under the contract with Wachovia when he financed the vehicle.

At the hearing, there was contention as to which State was the proper venue from which Bensel could obtain tags.²

Despite Bensel's unwillingness to go to the DMV, that was the proper route for him to have taken. According to evidence presented at the hearing from Nicole Ford, an officer of Wachovia, the lender does not send out tags. That is the responsibility of the Department of Motor Vehicles for a given state, which sends out registration and tags to the new owner after receiving paperwork from the dealership from which a vehicle was purchased. The Court accepts this testimony as credible. There is no evidence to show that the tags were not mailed to Bensel. Whatever twist of fate accounts for the lost tags, the facts are that Bensel does not have the tags and that he chose to default on his loan for this reason. Assuming without deciding that Bensel never received the tags, his remedy was to obtain them through the Department of Motor Vehicles, not to default on his loan agreement. Bensel apparently pursued every angle but the right one, despite being told by the dealership that he should go to the DMV.

In light of Bensel's clear remedy through the DMV, either Delaware or Pennsylvania, and his acknowledged default on the loan agreement, the Court finds that Plaintiff is entitled to a writ of replevin and entry of judgment in the amount of \$7,794.14, as well as reasonable attorneys fees and costs. Another hearing could not change this

²Either State DMV would have been a proper starting point for Bensel to have attempted to obtain duplicate, and the state of his residence at either the time he bought the vehicle or at the time he defaulted on the loan is irrelevant to the instant inquiry.

result. The evidence is in. Defendant chose not to go to DMV and chose to default on his loan agreement.

The petition for a writ of replevin is granted, and judgment is entered for Plaintiff in the amount of \$7,794.14, plus reasonable attorneys fee and costs.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

Original to Prothonotary